



DEPARTMENT OF VETERANS AFFAIRS

8320-01

38 CFR Part 36

RIN 2900-AO67

Loan Guaranty: Minimum Property and Construction Requirements

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This final rule amends the Department of Veterans Affairs (VA) guaranteed loan regulations by clarifying VA's statutory authority to establish minimum property requirements for properties securing VA-guaranteed loans. It does not make any substantive policy change or affect any substantive rights; rather, it merely cites more complete authority for the existing rule.

DATES: Effective Date: This rule is effective [insert date 30 days after date of publication in Federal Register].

FOR FURTHER INFORMATION CONTACT: John Bell III, Assistant Director for Loan Policy and Valuation (262), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, at (202) 632-8823.

SUPPLEMENTARY INFORMATION: Minimum property requirements are necessary to ensure that a property is adequate security for a VA-guaranteed loan. Both 38 United

States Code (U.S.C.) 3704(a) and 3710(b)(4) prohibit guarantees on properties that do not meet minimum acceptability requirements, as determined by the Secretary.

The implementing regulation found at 38 Code of Federal Regulation (CFR) 36.4351 states that no loan for the purchase or construction of residential property shall be eligible for a VA guaranty unless the property complies with the Secretary's minimum property requirements for planning, construction, and general acceptability. Although § 36.4351 refers to 38 U.S.C. 3704(a), a statutory provision that applies specifically to new or proposed construction, it does not include a reference to 38 U.S.C. 3710(b)(4), which applies generally to properties securing VA-guaranteed loans. This final rule amends 38 CFR 36.4351 so that it provides references to both of the relevant statutory provisions.

This final rule does not affect any substantive rights or implement any policy changes. Pursuant to 38 U.S.C. 3710(b)(4), VA has had a longstanding policy of requiring that "the nature and condition of the property [to secure a VA-guaranteed loan] is such as to be suitable for dwelling purposes." The requirements for general suitability can be found in chapter 12 of VA Pamphlet M26-7, sometimes called the Lender's Handbook. Similarly, pursuant to 38 U.S.C. 3704(a), VA has for decades retained a comprehensive list of requirements to ensure that homes that have been built for 1 year or less "meet or exceed minimum requirements for planning, construction, and general acceptability prescribed by the Secretary." Those requirements, like those required under section 3710(b)(4), are also found in chapter 12 of M26-7.

With the implementation of this final rule, participants in the VA guaranteed loan program will continue to follow longstanding policy and refer to M26-7 in determining

whether a property being used as security can satisfy the statutory requirements for planning, construction, and general acceptability. The only change is a correction to the CFR so that 38 CFR 36.4351 properly reflects full statutory authority for VA's existing policies.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a "significant regulatory action," which requires review by the Office of Management and Budget (OMB), as "any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of

legal mandates, the President's priorities, or the principles set forth in this Executive Order."

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866. VA's impact analysis can be found as a supporting document at <http://www.regulations.gov>, usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available at VA's Web site at <http://www1.va.gov/orpm/>, by following the link for "VA Regulations Published."

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any given year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. The impact of this rule will be to clarify the existing statutory authority of the VA to prescribe minimum property requirements for existing and proposed or newly constructed properties. There should be no impact on individuals, small or large entities, or State or local governments. Therefore, this final rule is exempt pursuant to 5 U.S.C. 605(b) from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance Program number and title for the program affected by this document are 64.114, Veterans Housing—Guaranteed and Insured Loans.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Jose D. Riojas, Chief of Staff, Department of Veterans Affairs, approved this document on December 6, 2013, for publication.

List of Subjects in 38 CFR Part 36

Condominiums, Housing, Veterans with disabilities, Loan programs—housing and community development, Loan programs—veterans, Grant program—veterans, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Veterans.

Dated: January 8, 2014

Robert C. McFetridge,
Director of Regulations Policy and Management,
Office of the General Counsel,
Department of Veterans Affairs.

For the reasons set forth in the preamble, VA amends 38 CFR part 36 as follows:

PART 36 — LOAN GUARANTY

1. The authority citation for part 36 continues to read as follows:

Authority: 38 U.S.C. 501 and as otherwise noted.

2. Revise § 36.4351 to read as follows:

§ 36.4351 Minimum property and construction requirements.

No loan for the purchase or construction of residential property shall be eligible for guaranty or insurance unless such property complies or conforms with those standards of planning, construction, and general acceptability that may be applicable thereto and prescribed by the Secretary pursuant to 38 U.S.C. 3704(a) or 38 U.S.C. 3710(b)(4), or both such sections, as applicable.

(Authority: 38 U.S.C. 3704(a), 3710(b)(4))

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